IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 372 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

THE STATE OF GUJARAT
Versus
ABHU RATA RABARI & ANR

==========

Appearance :
MR PRADIP D BHATE APP for Appellant,
MR SHAILESH C SHARMA for Respondents

==========

CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 16/08/2007

ORAL JUDGMENT :(Per : HONOURABLE MR.JUSTICE J.R.VORA)

1 The above referred Criminal Appeal is preferred by the State under Section 378 of the Code of Criminal Procedure against the judgment and order delivered by Special Judge (Atrocities), District Kutch at Bhuj, on 16th of October, 2004, in Special Case No. 14 of 2002, whereby both the present respondents being accused of the Special Case came to be acquitted by the Trial Court for the offences punishable under Sections 337, 323, 504, 506(2) and 114 of the Indian Penal Code as well as for the offences punishable under Section 3(1)(10) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2 The incident in question occurred on 19th of July, 2001 at village Samatra and the complaint has given by Kanjibhai Bijalbhai Mangaliya, Sarpanch of Samatra village. Accordingly, on 19th of July, 2001, at about 9.15, complainant Kanjibhai was reading a newspaper at the shop of one Govind Shivji, accused came there and they caught hold of the complainant on his throat and complainant was beaten by them by hands. Thereafter, both the accused pelted stones and injury was caused on the face and on the abdomen of the complainant. The accused uttered abuses and insulted caste of the complainant and stated

that why they were not given the subsidy of the earthquake. Complainant stated that it was not in his hands to give subsidy but it was given by the government. At that time, Govind Shivji and Kara Megha Maheshwari and Jayantilal Thakkar intervened and prevented accused from further beating the complainant. While going, the accused threatened the complainant to kill.

3 From the complaint, the crime came to be registered vide Crime Register No. I-163 of 2001 before the Taluka Police Station at Bhuj. The investigation was handed over to Mr. M.L. Ninama, Deputy Superintendent of Police, who investigated the offence and submitted charge sheet in the Court of Chief Judicial Magistrate, First Class, against the accused and the case was then transferred to the Court of Special Judge.

4 The Trial Court vide Exhibit – 1 framed charges against both the accused on 29th of June, 2004 and both the accused pleaded not guilty and, therefore, the prosecution examined seven witnesses and produced on record seven documents to prove its case. After the evidence of prosecution was over, further statement of each of the accused - respondents herein was recorded by the Trial Court and each of the accused stated that in the election of Samatra Gram Panchayat,

none of the respondents supported the wife of the complainant, who was Sarpanch at the relevant time and, therefore, the false complaint came to be filed against them. They further stated that this complainant had also filed other complaints against other persons and the complainant was in the habit of filing false complaint under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. Thereafter, the prosecution as well as defence was heard and, ultimately, the learned Trial Judge came to the conclusion of acquitting both the accused and, hence, this Appeal.

5 Learned APP Mr. Pradip D Bhate for the State and learned Advocate Mr. Shailesh C Sharma for the respondents were heard in detail. Leave to Appeal is granted. Appeal is Admitted. Learned Advocate Mr. Shailesh C Sharma waives on behalf of respondents.

6 Both the learned counsels have requested the Court to hear the Appeal finally as Record and Proceedings of the Trial Court is available with the Court and that they would supply necessary copies of evidence recorded and the documents produced before the Trial Court.

7 Request of both the counsels is granted and the matter is heard finally.

8 Learned APP Mr. Pradip D Bhate at this juncture vehemently urged that at least complainant has supported the prosecution case and his complaint. There are no contradiction in his evidence. There is medical evidence also in support of the complainant and there is no reason to disbelieve complainant. The learned Trial Judge did not appreciate the evidence properly and, hence, wrong conclusion. It is urged that appeal be allowed.

9 Learned Advocate Mr. S.C. Sharma for the respondents discussed in detail the findings and reasonings of the Trial Judge with appreciation of the evidence and submitted that Appeal is required to be dismissed.

10 We have called for the Records from the Trial Court and we have scanned the evidence recorded during the trial and reasons assigned by the Trial Judge for the acquittal of the accused. We have carefully examined the vital features of the matter and the reasonable probabilities arising out of the circumstance disclosed through the evidence recorded. We have carefully examined the conclusions of acquittal arrived at by the Trial Judge.

11 It is noteworthy that eye witness Govind Shivji, PW-2,

examined at Exhibit-11, has not supported the prosecution case. He stated to the extent only that the complainant was reading newspaper at his shop and the complainant was talking about electricity to be given by the Panchayat with other persons and except that nothing had happened. This witness was declared hostile. The other eye witness PW-3 Kara Megha, examined at Exhibit-12, half-heartedly supported the prosecution case to the extent that there were some altercations between the accused and the complainant and that accused caught hold of the complainant by his throat and further he stated that accused had beaten him (witness). While learned Trial Judge appreciated this witness along with the evidence of Govind Shivji, it is revealed that according to the witness Govindbhai, witness Kara Maga was not present at this shop and that it is not even the prosecution case that the witness was also beaten by the accused.

12 It is noteworthy that witness Jayantibhai, named in the FIR, has not been examined by the prosecution. PW-4 Mayagiri Karsangiri, examined at Exhibit – 13, is a panch of panchnama of scene of offence, and in hostile cross, he supported the panchnama and panchnama is produced at Exhibit – 14. PW-5 Dr. Niraj Mahendrabhai Jobanputra, examined at Exhibit – 17, treated the complainant. On 19th of July, 2001 at about 2.00 p.m. the patient was brought before him

with police yadi, and in history the patient stated that Abhu Rata Rabari had beaten him with fists and stones. According to this witness, there was an abrasion of 3 x 1 cm on the right shoulder and abrasion of 2 x 1 cm with swelling on right cheek. According to Doctor, injuries were simple and could have been caused by hard and blunt substance. He produced on record the certificate at Exhibit – 18. He has been cross-examined by the defence and from police papers defence could produce case papers of MLC case vide Exhibit – 21 wherein only history of assault was given while no names of the accused were mentioned. PW-6 Ganeshbhai Rudabhai Dungrani, examined at Exhibit – 22, being Talati-cum-mantri, produced on record caste certificate in respect of the complainant. PW-7 Bharatsinh Harisinh Jhala, examined at Exhibit – 24, was concerned PSO, before whom the complaint was given by the complainant and the crime was registered. PW-8 Manojkumar Lalubhai, examined at Exhibit 26, was the then Deputy Superintendent of Police. He investigated the offence and submitted charge sheet. Therefore, this case rests on the evidence of complainant Kanjibhai Bijalbhai Mangaliya, examined as PW-1, Exhibit – 9. According to him, while he was reading newspaper on the shop of Govind Shivji, accused came and stating that why they were not given subsidy, started giving abuses and caught hold of him from throat and pelted stones. Govind Shivji, Kara Megha and Jayantilal intervened

and separated the complainant from the accused.

13 Appreciating the above evidence, the learned Trial Judge came to the conclusion that in the evidence of complainant and medical evidence, there were contradictions about the parts of the body in which the injuries were found. It is not the case of the prosecution that the complainant was hit on the cheek and on shoulder and there were contradictions in the history recorded by the Doctor in the certificate at Exhibit – 18 and case papers produced at Exhibits – 20 and 21. This fact is taken into consideration by the learned Trial Judge that PW-5 Dr. Mayagiri Karsangiri was not mentioned in the charge sheet as witness, but thereafter with the permission of the Court, he was examined as witness. About the evidence of complainant, the learned Trial Judge further observed that the defence of the accused was more probable particularly in view of the fact that important witness Govind Shivji did not support the prosecution case and Jayantibhai was not examined. The complainant admitted in his cross-examination that earlier his wife contested the Gram Panchayat election and had lost the said election and according to learned Trial Judge there was enmity between the parties in respect of this election. The learned Trial Judge also took into consideration that it was an admitted fact that it was not in the hand of the complainant to give any subsidy to the accused and accused knew it

and, therefore, in all probabilities, accused could not have asked anything about this before the complainant. The learned Trial Judge came to the conclusion that the medical evidence produced in support of the say of the complainant was doubtful, as aforesaid. The complainant omitted to state how in actual words his caste was insulted. Further complainant also omitted to state in his deposition that what abuses in actual words were given to the complainant by the accused and, therefore, according to the learned Trial Judge, the prosecution failed to establish beyond doubt the incident against the accused and the accused were entitled to the benefit of doubt.

14 When we appreciated the evidence recorded and the reasons assigned by the Trial Court for the acquittal, we also found that the case of the prosecution could not be proved beyond doubt. The whole prosecution case hinges on the evidence of the complainant, who failed to depose before the Court the actual words uttered by the accused to insult the caste of the complainant and the actual words of abuses. The medical evidence appears to be doubtful on account of contradictions in the history recorded by the Doctor in the certificate at Exhibit – 18 and case papers produced at Exhibits – 20 and 21. There was enmity between the parties in respect of election of wife of the Complainant. The complainant is not supported by other prosecution

witnesses and supporting witness Kara Megha cannot be relied upon as he stated that accused also had beaten him when there is no such case by the prosecution. The learned Trial Judge took all these aspects into consideration to acquit the accused.

15 This being Appeal against acquittal, even if the second legitimate view is possible from the same evidence than taken by the Trial Court, interference is not permitted in the order of acquittal unless the impugned order is found palpably wrong, so perverse as unable to stand to reason and demonstrably unsustainable. From the above discussion, we are unable to come to the conclusion that the findings arrived at by the Trial Court were palpably wrong and demonstrably unsustainable. Therefore, the following order :

"Appeal stands dismissed."

(J. R. VORA, J.)

(SMT. ABHILASHA KUMARI, J.)

pnnair